

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3281 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

G S R T C

Versus

HARMANBHAI K PRAJAPATI

Appearance:

MR HC Raval for Petitioner

MR JS BRAHMBHATT for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 15/10/1999

ORAL JUDGEMENT

Heard the learned advocates for the parties.

The facts of the present case, in short, are that the respondent workman was working with the petitioner Corporation as conductor and he was on route on 7.6.1980 from Ahmedabad to Dhuvaran. That the bus conducted by the petitioner was checked by the checking staff of the

petitioner corporation and it was found that from a group of two passengers travelling from Ahmedabad to Borsad, fare of Rs. 11.30 was collected. However, tickets for the same were not issued and that from another passenger travelling from Ahmedabad to Nadiad, fare of Rs. 3.55 was collected. However, ticket for the same was not issued to him by the respondent workman. Report to that effect was made by the checking staff to the competent authority of the petitioner Corporation. Thereafter, departmental proceedings were initiated against the petitioner for the said misconduct by serving him with a chargesheet on 3.7.1981 and at the end of the said departmental inquiry, the services of the respondent workman were terminated by the petitioner Corporation which action of the Corporation was challenged by the respondent by raising industrial dispute which was, in turn, referred to the Labour Court, Nadiad, being reference (LCN) No. 746 of 1983.

Before the labour court, the petitioner corporation had produced relevant documents like chargesheet, finding, default card of the workman etc. The workman was examined at Exh.10 and he also admitted the legality and validity of the departmental inquiry. Thereafter, the labour court has considered the evidence on record and has come to the conclusion that the inquiry which was conducted against the respondent workman is legal and valid and the finding of the competent authority is also legal and valid. However, as regards the quantum of punishment, the labour court concluded that the same is not in consonance with the misconduct established against the workman. While exercising the powers under Section 11A of the Industrial Disputes Act, 1947, the labour court found that the order of punishment passed against the respondent workman is harsh and unjustified. In the facts and circumstances of the case, the labour court was of the view to withhold the back wages for the intervening period as punishment for the respondent workman. Therefore, the labour court directed the petitioner corporation to reinstate the workman in service on his original post, of course, without back wages under its judgment and award dated 24th April, 1989. Feeling aggrieved by the said award passed by the labour court, the petitioner Corporation has approached this Court by way of this petition under Article 226/226 of the Constitution of India challenging the said judgment and award passed by the labour court, Nadiad.

This court, while admitting the present petition by issuing rule thereon, has granted interim relief subject to the compliance of section 17B of the ID Act.

Mr. Raval, the learned advocate appearing for the petitioner corporation has contended that mere denial of back wages cannot be construed as punishment, sufficient looking to the misconduct committed by the respondent Corporation. According to him, the labour court has considered that the past record of the respondent workman is not so good and therefore, the labour court ought to have imposed some more and severe punishment. He has, therefore, submitted that some more punishment is required to be imposed upon the respondent workman.

I have considered the submissions of Mr. Raval, I have also perused the impugned judgment and award passed by the labour Court, Nadiad in which the labour court has observed that the misconduct is found to be proved on the basis of the evidence on record and the past record was not good and, therefore, in the facts and circumstances of the present case, I am of the opinion that mere denial of full back wages cannot be said or considered to be punishment sufficient in view of the misconduct proved against the workman as also in view of his past record. Therefore, to that extent, the award passed by the labour court, Nadiad is required to be modified. I am of the opinion that in view of the misconduct found to be proved against the respondent workman, it would be just and proper to direct the petitioner corporation to stop three annual increments of the respondent workman with permanent effect, with effect from January, 1999. Therefore, the award passed by the labour court, Nadiad is required to be modified to that effect.

In the result, this petition is partly allowed. The judgment and award dated 24th April, 1989 passed by the labour Court, Nadiad in Reference (LCN) No. 746 of 1983 shall stand confirmed in so far as the reinstatement of the respondent workman with continuity of service without back wages is concerned. In addition thereto, the petitioner Corporation is directed to stop three annual increments of the respondent workman with future effect, with effect from 1st January, 1999. It is clarified that such stoppage of three annual increments of the respondent workman shall not result in reduction of the present pay packet of the respondent workman and the petitioner corporation will stop such three increments with future effect from future date. Rule is made absolute accordingly. Interim relief granted earlier shall stand vacated. There shall be no order as to costs.

The petition challenging the impugned judgment and award of the labour court was filed in the year 1989 and more than ten years have gone by now. Therefore, in the interest of justice to direct the petitioner corporation to implement this order modifying the impugned award of the labour court within some reasonable time. Therefore, the petitioner corporation is directed to implement the same within three months from the date of receipt of certified copy of this judgment.

15.10.1999. (H.K.Rathod,J.)

Vyas